



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "*Act*"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceedings which declares that on February 26, 2015, the landlord sent the tenants the Notice of Direct Request Proceedings by registered mail to the rental unit. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on March 03, 2015, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on March 22, 2014, indicating a monthly rent of \$1850.00, due on the first day of the month for a tenancy commencing on May 01, 2014;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet noted that \$950.00 of the \$1,850.00 identified as owing in the 10 Day Notice was paid on February 02, 2015;and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 05, 2015, and personally handed to the tenants on February 05, 2015, with a stated effective vacancy date of February 15, 2015, for \$1,850.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to the tenants at 5:30 p.m. on February 05, 2015. The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on February 05, 2015.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,850.00 as per the tenancy agreement.

The landlord served the 10 Day Notice, dated February 05, 2015, to the tenants after receiving partial payment on February 02, 2015. On the 10 Day Notice, the landlord included an incorrect amount of rent owing, as the landlord, by placing an amount of \$1,850.00 as unpaid rent, alerted the tenants to an incorrect amount of unpaid rent owing, when, in fact, the tenants owed only \$900.00 unpaid rent for the month of February 2015. The tenants were granted a five-day period within which to dispute the 10 Day Notice. I find that although the landlord placed an incorrect amount as rent owed for February 2015, the tenants still owed outstanding rent in the amount of \$900.00 and did not pay the outstanding amount within the five-day period, nor did they dispute the Notice during the same period of time.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not dispute the 10 Day Notice within that 5 day period

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, February 15, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order in the amount of \$900.00, the amount claimed by the landlord, for unpaid rent owing for February 2015 as of February 23, 2015.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$90.00 for rent owed for February 2015. The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 04, 2015

Residential Tenancy Branch

